

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PENSKE MEDIA CORPORATION, :
: No. 20 Civ. 4583 (MKV)
Plaintiff, :
:
v. :
:
SHUTTERSTOCK, INC., :
: Defendant. :
-----x

**PLAINTIFF PENSKE MEDIA CORPORATION'S
[ANTICIPATED] STATEMENT PURSUANT TO LOCAL CIV. R. 56.1**

Plaintiff Penske Media Corporation (“PMC”), by its attorneys, submits the following statement pursuant to Local Civil Rule 56.1:

A. The Parties

1. Plaintiff PMC is a digital media, publishing, and information services company. It publishes more than 20 digital and print brands covering the entertainment and fashion industries, including Women's Wear Daily (“WWD”), Variety, Deadline Hollywood, Rolling Stone, and others. (Anticipated Declaration of Karl Walter (“Walter Decl.”) ¶ __; Defendant Shutterstock Inc.’s Counterclaims, Dkt. No. 77 (“Counterclaims”) ¶ 13).

2. PMC owns a large and ever-growing photographic collection with millions of images related to its publications. (Walter Decl. ¶ __).

3. PMC’s photographic collection includes historic fashion, celebrity, and event images, created over the last 100+ years, from the various PMC-owned

publications (the “Historic Archive”). (Expert Report of Eric Rachlis, dated Dec. 16, 2021 (“Rachlis Report”) ¶¶ 10-12, 27, 29, 30).¹

4. Defendant Shutterstock, Inc. (“Shutterstock”) is a company that owns and operates website platforms that license photographs to third parties for use on third party websites, publications, marketing materials, and corporate communications. (See Form 10-K, dated Feb. 24, 2016, PMC_0022218-345 at 22220; *see also* Counterclaims ¶¶ 11-12, 15).

5. Until 2015, Shutterstock was known primarily for its “stock” photographs, but it desired to enter the more prestigious realm of editorial imagery, including fashion and entertainment photography. (Deposition Transcript of Ben Pfeiffer (“Pfeiffer Tr.”) 54:20-25, 162:16-18, 164:17-23; Shutterstock Q4 2020 Earnings Call Transcript, PMC_0019419-41 at 19425; Deposition Transcript of Stan Pavlovsky (“Pavlovsky Tr.”) 59:11-60:10; *see also* Counterclaims ¶ 12).

B. The Archive & Event Agreement

6. PMC and Shutterstock entered into an agreement, named the Archive & Event Image Hosting and Licensing Agreement (the “Archive & Event Agreement” or “Agreement”), as of July 1, 2015. (Archive & Event Agreement, SSTK092808-29).

7. The Archive & Event Agreement provided for an initial six-year term that was to expire on June 30, 2021. (Archive & Event Agreement § 1).

¹ All referenced exhibits will be attached to the anticipated Declaration of Cynthia S. Arato (“Arato Decl.”) and identified accordingly in the Rule 56.1 Statement to be filed with PMC’s anticipated motion for summary judgment.

8. The Archive & Event Agreement provided Shutterstock with exclusive rights to license PMC's then-existing and ever-growing photographic collection, subject to limited exceptions. (Counterclaim ¶ 13; Archive & Event Agreement § 3(a)).

9. The Agreement provided Shutterstock with these benefits in two main ways. (Archive & Event Agreement § 3; Counterclaims ¶ 13).

10. First, Shutterstock received exclusive rights to license to third parties what the Agreement defined as PMC's "Archive Content"—namely, images "owned or created by PMC" or those "to which PMC has the contractual right to syndicate and/or license." (Counterclaim ¶ 12; Archive & Event Agreement §§ 3(a)(i), 4; Shutterstock Press Release, dated June 22, 2015, PMC_0022535-37, at 0022535).

11. PMC's Archive Content included PMC's Historic Archive. (Counterclaim ¶ 12; Archive & Event Agreement § 3(a)(i); Shutterstock Press Release, dated June 22, 2015, PMC_0022535-537, at 0022535).

12. Second, PMC agreed to provide Shutterstock with available access to select events—hosted by PMC or by third parties—at which new photographic images could be created for Shutterstock to license. (Counterclaims ¶¶ 13 and 15; Archive & Event Agreement § 3(a)(ii)-(iii)).

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Shutterstock entered into the Archive & Event Agreement as part of a strategic effort to expand its licensing business into the news and editorial space. (Deposition of Benjamin Pfeifer (“Pfeifer Tr.”) 25:11-17; 33:17-23; 54:20-25, 182:16-183:5; SSTK Company Overview, dated Sept. 2017, SSTK092400-41, at 092418; Shutterstock Form 10-K, dated Feb. 24, 2016, PMC_0022218-345, at 0022222-23; Shutterstock Press Release, dated June 22, 2015, PMC_0022535-537, at 0022535; Counterclaim ¶ 13; Pfeiffer Tr. 12:12-17; 17:4-9; 19:20-22 (the images that Shutterstock obtained under the Agreement were considered “editorial” and not commercial “stock” images)).

15. A number of Shutterstock’s staff photographers, who were newly hired in 2015 to launch Shutterstock’s editorial division (Shutterstock Press Release, dated Sept. 9, 2015, PMC_0022538-39; Pfeifer Tr. 166:4-20) have explained that “[p]rior to...2015,” Shutterstock “didn’t have an editorial division developed.” (Deposition Transcript of Chelsea Lauren (“Lauren /Jones Tr.”) 13:11-13; *accord* Lauren/Jones Tr. 28:8-10 (entertainment was “brand new” to Shutterstock in 2015); Deposition Transcript of Rob Latour (“Latour Tr.”) 12:9-11 (“having an editorial department” was still a “dream[]” of Shutterstock as of 2015)).



17. Accordingly, in 2015, Shutterstock embarked on a two-pronged business plan to move beyond the stock photography business and into the editorial market. First, in January 2015, Shutterstock acquired Rex Features, Europe’s largest independent photo press agency, which “mark[ed] Shutterstock’s substantive entry in editorial imagery.” (Pfeifer Tr. 164:17-23; Shutterstock Q4 2020 Earnings Call Transcript, PMC_0019419-41 at 19425; Pavlovsky Tr. 59:11-60:10).

18. [REDACTED]

[REDACTED]

19. In announcing the deal, Shutterstock characterized PMC as a “trailblazing company” whose “strategic alliance” with Shutterstock would “accelerate [Shutterstock’s] progress in editorial imagery.” (Shutterstock Press Release, dated June 22, 2015, PMC_0022535-37, at 0022535; Deposition Transcript of Jon Oringer (“Oringer Tr.”) 212:23-213:20).

20. Shutterstock explained in securities filings that PMC gave Shutterstock “credibility in the market for editorial content that will allow us to further grow our product offerings.” (Form 10-K, dated Feb. 24, 2016, PMC_0022218, at 0022222-23; Oringer Tr. 222:21-224:23).

21. [REDACTED]

[REDACTED]

[REDACTED]

22. Shutterstock agreed to provide PMC with significant compensation. (Archive & Event Agreement).

23.

The figure consists of five horizontal bars at the top, each composed of several dark gray segments. Below this is a grid of 12 cells arranged in three rows and four columns. The first four cells in each row are solid black. The fifth cell in each row contains a smaller 3x3 grid of white squares. The bottom row of the main grid has three white squares on the right side.

A series of horizontal black bars of varying lengths, with a small square marker next to the second bar from the top.

26. Shutterstock also agreed to provide photographers, at its expense, to attend and shoot images at both PMC Events and Third Party Events and that PMC would own

U.S. Department of State  

the copyrights to those images. (Archive & Event Agreement §§ 3(a)(ii)-(iii); Counterclaims ¶ 16).

27. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

C. Shutterstock Accepted The Risk of A Revenue Shortfall When It Entered The Deal

28. [REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]
[REDACTED]

30. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

31.

Term	Percentage
Climate change	100%
Global warming	100%
Green energy	100%
Sustainable development	100%
Environmental protection	100%
Ecology	91%

32.

[REDACTED]

33. [REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

D. Shutterstock Reaps Benefits Under The Deal Both Pre and Post Pandemic

Shutterstock Benefitted From PMC's Reputation And Relationships In The World Of Fashion And Entertainment

35. Shutterstock benefited from PMC's cachet in the fashion and entertainment world, which helped propel Shutterstock from a supplier of ordinary stock photos to an influential name in editorial imagery. (Form 10-K, dated Feb. 24, 2016,

PMC_0022218-345, at 0022222-23; SSTK Company Overview, Sept. 2017, SSTK092400-41, at 092418).

36. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

37. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Deposition Transcript of Benjamin Melvin (“Melvin Tr.”) 12:11-14:11, 17:14-18:20, 22:25-25:1, 74:9-75:16; *see also, e.g.*, [REDACTED]
[REDACTED]).

38. By early 2020, Shutterstock no longer needed PMC to obtain access to various premier events, like the Oscars, Grammys, Golden Globes and Emmys and rejected the credentials PMC offered to Shutterstock. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PMC Images Remained Featured Content on Shutterstock's Website During The Pandemic Where They Retained Their Value

41. As of March 2020, Shutterstock had received approximately 2.5 million images under the Archive & Event Agreement, all of which were owned by PMC.

(Tabulation of PMC Images Delivered to SSTK, SSTK161815; [REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Between March and July 2020, Shutterstock identified PMC content and PMC brands on its websites as “world class content” from “industry leaders” and as “featured parties,” and identified PMC’s archive as a “highlight[] of our editorial collection.” (Shutterstock Webpage, Main Editorial Page, dated as of Apr. 29, 2020, PMC_0022838-41, at 0022839; [REDACTED]
[REDACTED]
[REDACTED]).

44. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

45. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

47. [REDACTED]
[REDACTED]

48. [REDACTED]

[REDACTED]

[REDACTED]

49. In announcing the deal, Shutterstock characterized “PMC’s archive,” including the “100-year old publications Variety and WWD,” as “legendary.” (Shutterstock Press Release, dated June 22, 2015, PMC_0022535-37, at 0022535).

50. Shutterstock’s expert witness concedes that PMC’s historic archive had “materially viable content” and “some nice material.” (Rachlis Tr. 79:21-80:9; Rachlis Report ¶ 27, 29-30).

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PMC Continued to Supply Content to Shutterstock During the Pandemic and Would Have Supplied More Content to Shutterstock Had Shutterstock Not Terminated The Deal

52. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54. Shutterstock terminated the Agreement as of July 16, 2020.

(Counterclaims ¶¶ 31, 38).

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. [REDACTED]

[REDACTED]

[REDACTED]

57. Vaccines became widely available in March 2021. *See, e.g.*, NY Times, *See How Vaccinations Are Going in Your County and State* (updated Mar. 21, 2022), <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html> (noting “vaccine rollout began in December 2020, with a focus on some of the most vulnerable populations” and “every state had made all adults eligible for the shots by April 2021”) and, as a result, certain live events resumed around March 2021, at which PMC photographers shot new images. (Walter Decl. ¶ __; Deposition Transcript of Michael Buckner (“Buckner Tr.”) 122:23-123:7).

58. Had Shutterstock not terminated the Agreement, it would have benefitted from obtaining images over four months of live events (March through June 2021).

[REDACTED]

[REDACTED]

[REDACTED] Lightbox storing thousands of photographs of live events shot by PMC, access provided to Shutterstock's counsel on Dec. 28, 2021).

Shutterstock Continued To License PMC Content During The Pandemic

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. Using that figure and even assuming that the pandemic period started on March 1, 2020 and continued through the July 16, 2020 termination date, Shutterstock's average monthly revenues earned from the licensing of PMC content would be approximately [REDACTED] (Arato Decl. ¶__).

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67.

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ANSWER The answer is (A). The first two digits of the number 1234567890 are 12.

69.

ANSWER The answer is (A). The first two digits of the number 1234567890 are 12.

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70. That spreadsheet shows that after March 15, 2020, Shutterstock customers reported using [REDACTED], yielding listed gross revenues of approximately

71. This listed post-pandemic revenue figure understates the revenue yielded by Shutterstock's licensing of PMC images during the pandemic and before Shutterstock terminated the Agreement. [REDACTED]

72. In any event, the reported revenue figure during the pandemic period
[REDACTED]
[REDACTED]
[REDACTED]

73. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

74. Under this method, as reported on SSTK168954, Shutterstock earned approximately [REDACTED] in gross revenues under the Archive & Event Agreement based on usage dates listed during the pandemic period beginning in mid-March 2020, for average monthly gross revenues of approximately [REDACTED]. (Arato Decl. ¶__).

75. By comparison, as reported on SSTK168954, Shutterstock earned approximately [REDACTED] in average monthly gross revenues under the Archive & Event Agreement listed for usage dates occurring during the pre-pandemic years of 2015 to mid-March 2020 plus all listings with no usage date. (Arato Decl. ¶__).

76. Deducting the average monthly freelance costs of about [REDACTED] from the average monthly pre-pandemic gross revenues of about [REDACTED] demonstrates that Shutterstock earned average monthly revenues less freelance costs of [REDACTED] from its licensing of PMC content before the pandemic. (Arato Decl. ¶__).

77. Shutterstock's average monthly net earnings during the pandemic were, accordingly, approximately [REDACTED] of Shutterstock's average monthly net earnings before the pandemic. (Arato Decl. ¶).

78. [REDACTED]

[REDACTED]; email from Shutterstock counsel dated Jan. 4, 2022).

79. In advance of Karl Walter's deposition, Shutterstock produced a modified spreadsheet bates stamped SSTK168955 removing certain highly confidential information from SSTK168954. (*See* Communication from counsel, dated Feb. 28, 2022).

80. [REDACTED]

E. Displeased with Its Obligations Under the Agreement, Shutterstock Tried to Renegotiate the Agreement Before The Pandemic Hit

81. [REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

83. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

86. [REDACTED]

[REDACTED]

[REDACTED]

87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. Just Days After The Pandemic Hit The United States, Shutterstock Latched Onto The Pandemic As A Pretext to Terminate The Agreement

89. Shutterstock's chief of Editorial [REDACTED]

[REDACTED]

[REDACTED]

Accordingly, shortly after the pandemic hit the United States, [REDACTED]

[REDACTED]

[REDACTED]

90. Shutterstock decided to use the pandemic to negotiate a new and better deal with PMC no later than March 24, 2020, just days after the pandemic hit. At that time, Shutterstock's then current CEO and Chairman, Jon Oringer, and Ms. Murray

[REDACTED]

[REDACTED]

91. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93. [REDACTED]

[REDACTED]

[REDACTED]

94. Stan Pavlovsky, previously COO of Shutterstock, took over as CEO in April 2020 (Pavlovsky Tr. 49:10-15).

95. [REDACTED]

[REDACTED]

96. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

98. [REDACTED]

[REDACTED]

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

104. [REDACTED]

[REDACTED]

[REDACTED]

105. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

110.

111.

112. Shutterstock has alleged in its Counterclaims that, to the extent PMC did not provide access to PMC Events or Third Party Events, it was because those events had to be cancelled “as a direct result of the pandemic” and Covid-19 related “restrictions.” (Counterclaims ¶¶ 1, 3, 20-24). Shutterstock has also alleged that it was because of the pandemic that “these events ceased to exist in any meaningful way” (*id.* ¶ 3) because “without a red carpet,” Shutterstock could not create licensable images (*id.* ¶ 1).

113.



G. Shutterstock Wrongfully Displayed PMC Content Post-Termination

114. Shutterstock purported to terminate the parties' relationship as of July 17, 2020. (Counterclaims ¶¶ 31, 38).

115. Shutterstock continued to display PMC content past the July 16, 2020 cutoff. Specifically, as relevant to PMC's copyright infringement claim, Shutterstock failed to take down three images from the LA USD School Closure and 66 images from the 92nd Annual Academy Awards.

116. Michael Buckner shot the images from the LA USD School Closure on December 15, 2015. (Image Metadata Screen Shots, PMC_0024915-17). At the time he shot those images, he was employed as Chief Photographer of PMC and his duties included shooting images for PMC. (Buckner Tr. 13, 38; Walter Decl. ¶ __).

117. Michael Buckner shot the images from the 92nd Academy Awards on February 29, 2020. At the time he shot those images, he was employed as Chief Photographer of PMC and his duties included shooting images for PMC. (Buckner Tr. 13, 38; Walter Decl. ¶ __).

118. PMC owns and has a copyright registration for the LA USD School Closure images. (PMC Copyright Registration Collection 9, PMC_0024911-12 (VA2-215-216); Email from Shutterstock's Counsel, dated June 28, 2021 ("No dispute; both parties agree that PMC owns all 3 of the images listed in the registration.")).

119. PMC owns and has a copyright registration for the images shot at the 92nd Annual Academy Awards. (PMC Copyright Registration Collection 4, PMC_0024889-90 (VA2-213-153); Email from Shutterstock's Counsel, dated June 28, 2021 ("No dispute; both parties agree that PMC owns all 66 of the images listed in the registration.")).

120. The images from the LAUSD School Closure were displayed on Shutterstock's website [REDACTED]. (Shutterstock Website Screen Shots, PMC_0004424-27; [REDACTED]).

121. The images from the 92nd Academy Awards were displayed on Shutterstock's website [REDACTED]. (Shutterstock Website Screen Shots, PMC_0004379-82; [REDACTED]).

122. Shutterstock's counsel has represented that, after the Agreement was terminated, Shutterstock also granted so-called "renewal" licenses to exploit certain of the above noted images shot by Michael Buckner. (Arato Decl. ¶__).

G. One PMC Employee Innocently Accesses The Shutterstock Website After Shutterstock Mistakenly Failed to Disable Access

123. [REDACTED]
[REDACTED]
[REDACTED]

124. [REDACTED]
[REDACTED]
[REDACTED]

125. [REDACTED]
[REDACTED]
[REDACTED]

126. [REDACTED]

[REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

128. [REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

[REDACTED] Deposition

Transcript of Kimberly McDonald (“McDonald Tr.”) 11:16-12:16; 38:8-12).

130. On July 14, 2020, Ms. McDonald received an email addressed to “ALL RS Edit Staff,” labeled “URGENT, MUST READ.” (Email from Lotz, dated July 14, 2020, PMC_0020002-05; McDonald Tr. 19:6-20:18).

131. At the time, Ms. McDonald was a member of the “RS Edit Staff” listserv. (McDonald Tr. 18:21-22:7).

132. The email advised the RS Edit Staff to discontinue use of Shutterstock accounts but Ms. McDonald did not review the email. (McDonald Tr. 20:8-18).

133. Ms. McDonald did not read the email because it would have been sent “when we were doing remote production during the pandemic, meaning that I would have

been responsible for between 10 to 15 videos within a week. It's very easy to have emails get buried when you're working at that frequency." (McDonald Tr. 45:24-46:3).

134. [REDACTED]

135. Had Ms. McDonald reviewed the email, she would not have downloaded the images. (McDonald Tr. 25:11-17, 43:14-17).

136. Shutterstock has no evidence of an injury arising from McDonald's downloading of the 20 images. [REDACTED]

137. [REDACTED]

138. Shutterstock has produced no documentary evidence demonstrated that it suffered at least \$5,000 in damages as a result of these activities. (Arato Decl. ¶__).

139. The only terms of use that Shutterstock produced are dated November 29, 2021. (Terms of Use, SSTK111629-35).

140. [REDACTED]

H. PMC Did Not Withhold Archive Images In Bad Faith

141. Shutterstock alleges that it was entitled to receive, and expected, a certain number of Historic Archive images “per month” between January and April 2020. (Counterclaims ¶ 28).

142. Shutterstock alleges that “in 2019, Shutterstock received, on average, 437 archival submissions per month,” whereas “Shutterstock received just 119 archival images for the four-month period from January through April 2020.” (Counterclaims ¶ 28).

143. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).

144. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

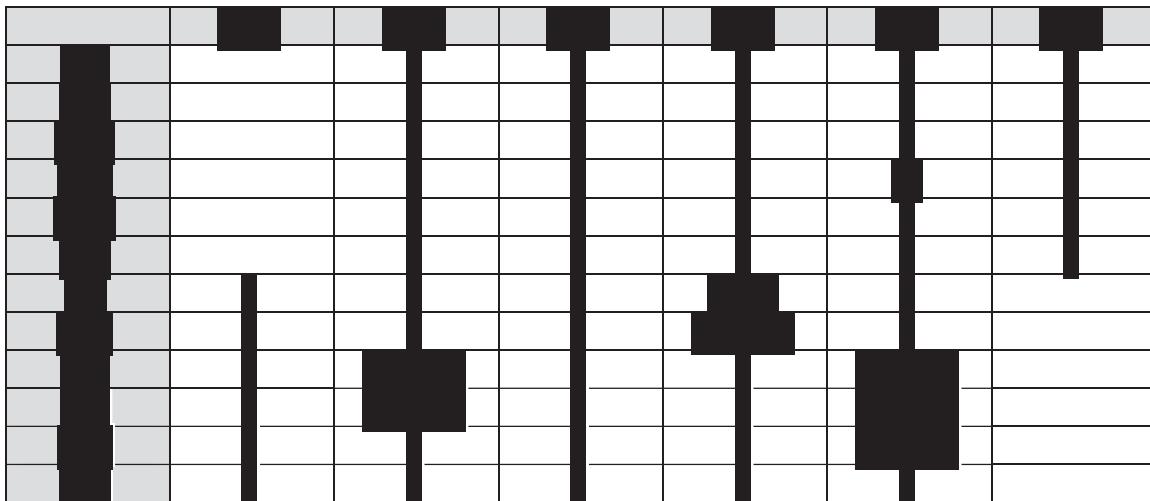
145. Shutterstock produced a spreadsheet in this action documenting the timing of PMC’s delivery of Historic Archive images. (Arato Decl. __; SSTK00006).

146. [REDACTED]

[REDACTED]

147. According to Shutterstock's tracking, [REDACTED]

[REDACTED]

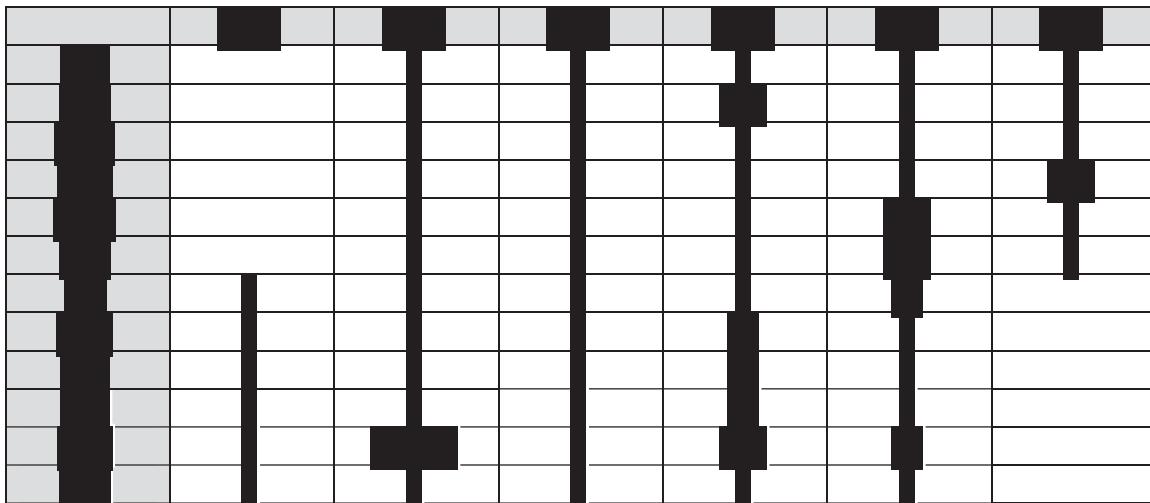


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150. Shutterstock never articulated any injury resulting from the purported withholding of archival images between January and April 2020, [REDACTED]
[REDACTED]).

Dated: New York, New York
March 23, 2022

SHAPIRO ARATO BACH LLP

By: /s/ Cynthia S. Arato
Cynthia S. Arato

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